

DEPARTMENT OF THE ARMY  
Wilmington District, Corps of Engineers  
Post Office Box 1890  
Wilmington, North Carolina 28402-1890

Action ID No. 200411475

October 28, 2004

PUBLIC NOTICE

**INTERESTED PARTIES:** The District Engineer, Wilmington District, proposes to issue an order assessing a Class I Administrative Penalty against Mr. Joseph Winslow for a violation of permits granted under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

**History:**

**PERMITS INVOLVED AND ALLEGED VIOLATION:** The Department of the Army issued General Permit No. 197800056 to Mr. Winslow on April 6, 2004. Permit No. 197800056 authorized the construction of a pier and boatlift in navigable waters of the United States on Mr. Winslow's property, located off State Road 1350, in the Pamlico Shores Subdivision, on Ocracoke Island, in Hyde County, North Carolina. The State of North Carolina authorized the pier and boatlift under CAMA Permit No. 37080-B on March 24, 2004.

Permit No. 197800056 was violated as follows:

The permittee and an associate utilized the prop wash from an anchored outboard motorboat to dredge a channel and boat basin within navigable waters of the United States, resulting in the deposition of spoil material within approximately 8,200 square feet of the Pamlico Sound. This activity resulted in adverse impacts to highly sensitive areas within the Pamlico Sound including submerged aquatic vegetation, shellfish waters, and designated Essential Fish Habitat. Mr. Winslow failed to comply with special condition (t) of the permit, which states, "this general permit does not authorize any dredging."

In response to the enforcement action for Permit No. 197800056, Mr. Winslow was required to restore pre-project elevations and contours to the impacted area. The restoration activities were coordinated thorough state and Federal resource management agencies and involved hand-raking original spoil material back into the excavated area, the placement of oyster shell into areas where original materials could not be retrieved, and a 2-inch layer of compatible sand capped over the top of the disturbed site. Mr. Winslow completed the restoration work to the satisfaction of all agencies on July 21, 2004.

### **Penalty Description:**

**AUTHORITY FOR PROCEEDING:** This Administrative Penalty proceeding is initiated under the authority of 33 U.S.C. 1319(g) and 33 CFR Part 326.6. The procedure for assessing civil penalties in cases such as this is set out in the statute and the regulation. Following the discovery and investigation of a violation of a permit, notice is given to the permittee, the appropriate state agency, and the public. The permittee, the state, or any member of the public may file comments within 30 days. If requested by the permittee, a hearing will be held before a Presiding Officer who will submit a report and recommend a decision to the District Engineer. The District Engineer will issue a Final Order on the case to the permittee. Public participation in the hearing is permitted if a hearing is held.

**PENALTY PROPOSED:** The amount of the penalty proposed in this case is \$5,000. This proposal is subject to revision in the interest of justice after all evidence and comments have been received and reviewed. The amount of the penalty that the District Engineer is authorized to assess as a Class I Penalty is \$10,000 per violation and not more than \$25,000 total. In a case involving multiple violators, each violator is subject to a separate, not joint, penalty.

**REQUEST FOR HEARING:** The permittee has 30 days following receipt of this formal notice of proposed penalty to request a hearing. Written request, by the permittee, for a hearing should be directed to the District Engineer within this designated comment period and must state the specific reasons for requesting a public hearing. The request should specify, in summary form, the factual and legal issues in dispute and the specific grounds for defense. The permittee has a right to present evidence at the hearing; however, he may not challenge the permit condition or limitation, which is the subject matter of this order.

**COMMENTS/ADMINISTRATIVE RECORD:** During the 30 day comment period, any person may submit written comments on the proposed Penalty Order. These comments should be sent to the District Engineer by 4:30 p.m., November 29, 2004. Any submitted comments will be included in the administrative record relating to the Proposed Order. All information submitted by the permittee and persons commenting on the Proposed Order will be placed in the administrative record, which will be available for inspection during regular business hours at the U.S. Army Corps of Engineers, Wilmington District, 69 Darlington Avenue, Wilmington, North Carolina. (The administrative record is subject to the provisions of law restricting the disclosure of confidential information.) Comments should be directed to:

U.S. Army Corps of Engineers  
ATTN: Justin McCorcle (CESAW-OC)  
PO Box 1890  
Wilmington, North Carolina 28402

**PUBLIC HEARING:** The permittee and all persons who file comments will be given notice of any hearing held on this case. The permittee and all commenters will have a reasonable opportunity to be heard and to present evidence at such hearing, if a hearing is held.

**FINAL DECISION:** If the permittee does not request a hearing, the District Engineer may issue the Final Order on this violation on or after 30 days following receipt of this formal notice by the permittee.

**POST DECISION HEARING/APPEAL:** Any Final Order issued under these procedures shall become effective 30 calendar days following its issuance unless (1) a petition to set aside the order and to hold a hearing is filed by any person who commented on the Proposed Order and the petition is granted, or (2) an appeal to the United States District Court is taken under 33 U.S.C. 1319(g)(8).

Permit: USACE Regional General Permit No. 197800056

### PROPOSED ADMINISTRATIVE PENALTY ORDER

Under the authority granted by 33 U.S.C. § 1319(g) and 33 CFR Part 326.6, I, Colonel Charles R. Alexander, Jr., District Engineer, Wilmington District, propose to issue this order assessing a Class 1 Administrative Penalty for violation of the above-referenced permit.

**Name/Address of Permittee:**

Mr. Joseph Winslow  
4176 Wren Landing Drive  
Little River, South Carolina 29566

**Permitted Activity:**

The construction of a pier and boatlift in navigable waters of the United States on Mr. Winslow's property off State Road 1350, in the Pamlico Shores subdivision, on Ocracoke Island, in Hyde County, North Carolina, consistent with USACE Wilmington District Regional General Permit (RGP) Number 19780056 and with the plans submitted in CAMA permit number 37080-B.

**Condition(s) or Limitation(s) of Permit Reportedly Violated:**

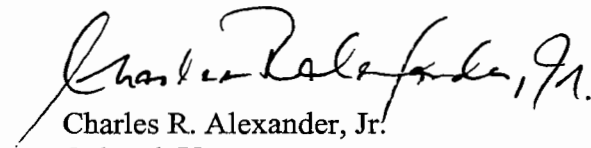
Mr. Winslow failed to comply with special condition (t) of the RGP, which states, "this general permit does not authorize any dredging."

**Description of the Nature of the Violation(s):**

Mr. Winslow and an associate used a small boat propeller to dredge a channel and basin in navigable waters of the United States, depositing dredged material over approximately 8200 square feet of the Pamlico Sound.

I propose to assess a Class 1 Administrative Penalty against the permittee in this case for \$5,000; however, this proposal is subject to revision in the interest of justice after all evidence and comments have been received and reviewed. The amount that may be assessed as a Class 1 Administrative Penalty may not exceed \$10,000 per individual violation or a maximum amount of \$25,000.

Issued this 28<sup>th</sup> day of October 2004.

  
Charles R. Alexander, Jr.  
Colonel, U.S. Army  
District Engineer